

REMARKS/ARGUMENTS

This is in response to the decision of the Board of Patent Appeals and Interferences in Appeal No. 2008-1077 dated June 19, 2008. An RCE is being filed herewith. Claims 1, 15, 30, and 32 are amended. Claims 1-2, 4-8, 11-16, 18-23, 26-27, and 30-33 are pending for further examination.

Following the Board's decision, independent claims 1, 15, 30, and 32 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over either Glaser et al. (U.S. Patent No. 5,837,361) or Lemmer et al. (U.S. Patent No. 6,336,999), in view of Depauw et al. (U.S. Patent No. 5,153,054). These rejections are traversed for at least the following reasons.

Claim 1 has been amended to recite "the second layer comprising zinc oxide being about 40-150nm thick and the layer consisting essentially of the oxide of NiCr being about 20-45nm thick." Claims 15, 30, and 32 recite similar, though not identical, features. Support for these limitations can be found, for example, on pages 11-12 and 14 of the original specification. These features are not taught or suggested by the alleged combinations. Thus, these combinations do not render obvious the inventions of claims 1, 15, 30, and 32.

The Alleged Glaser/Depauw Combination

Glaser and Depauw, alone and in combination, do not teach or suggest at least the features of claims 1, 15, 30, and 32 noted above. Glaser at col. 3, lines 40-48 teaches a lower coating based on zinc oxide. Assuming, *arguendo*, that the claimed layer in question and this layer of Glaser could be fairly compared, Glaser teaches a layer thickness of only 16-35nm -- clearly outside of the claimed range. The "sacrificial layer" of Glaser which may in some cases be "based on . . . a metal alloy of the nickel-chromium" type has a layer thickness of about .5-6nm, again, clearly outside of the claimed range.

Depauw makes clear, for example, at col. 3, lines 32-33, that its layer of zinc oxide has “a thickness not greater than 15 nm” -- clearly outside of the claimed range. Depauw does not appear to disclose a NiCr layer, and does not teach or suggest the claimed range with respect to its sacrificial metal layer. For example, it merely teaches a thickness preferably in the range of 2-12nm, and more preferably in the range of 2-3nm (see col. 8, lines 9-11).

Furthermore, Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have been motivated to somehow adjust the layer thicknesses as disclosed in Glaser, Depauw, or their alleged combination for a number of reasons.

Although Glaser does appear to provide one nebulous suggestion that layer thicknesses can be changed at col. 2, lines 1-13, Glaser teaches ranges far outside those specifically claimed. Moreover, the Glaser’s only real suggestion of being able to modify layer thicknesses (i.e., at col. 2, lines 1-13) suggests modifying the thickness(es) of the silver layer(s). Aside from this nebulous suggestion, Glaser appears to be silent regarding modifying any of the layers’ thicknesses.

The case against making such modifications is even stronger in Depauw. That is, although Depauw does appear to suggest that the layer thickness can be varied to some extent at col. 7, lines 51 to col. 9, line 2, there are clear limits that Depauw itself imposes on such modifications. For example, Depauw teaches away from any modification approaching the claimed ranges, at least because it clearly and unequivocally states that its zinc oxide layer has a thickness not greater than 15nm (see, e.g., col. 3, lines 32-33). Depauw also states that its improvements “are primarily achieved by ensuring a low thickness of zinc oxide” (col. 4, lines 6-9, emphasis added), thus arguing against the significantly higher (i.e., more than double) thickness of the claimed zinc oxide layer.

In view of the above, Applicant respectfully submits that the alleged Glaser/Depauw combination fails to render obvious claims 1, 15, 30, and 32. Furthermore, Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have been motivated to “adjust” the Glaser/Depauw combination in a way that would render claims 1, 15, 30, and 32 obvious. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

The Alleged Lemmer/Depauw Combination

Lemmer and Depauw, alone and in combination, do not teach or suggest at least the features of claims 1, 15, 30, and 32 noted above. Lemmer does not appear to disclose a zinc oxide layer at all. Thus, there is nothing in Lemmer to adjust to meet the specifically recited limitations of claims 1, 15, 30, and 32. Additionally, Lemmer appears to be silent regarding the thicknesses of its layers.

As noted above, Depauw makes clear, for example, at col. 3, lines 32-33, that its layer of zinc oxide has “a thickness not greater than 15 nm” -- clearly outside of the claimed range. Depauw does not appear to disclose a NiCr layer, and does not teach or suggest the claimed range with respect to its sacrificial metal layer. For example, it merely teaches a thickness preferably in the range of 2-12nm, and more preferably in the range of 2-3nm (see col. 8, lines 9-11).

Furthermore, Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have been motivated to somehow adjust the undisclosed layer thicknesses of Lemmer, those disclosed by Depauw, or those purportedly found in the alleged combination of the two. This is true at least because Lemmer appears to be silent regarding a zinc oxide layer and the thicknesses of any of its layers, and because Depauw explicitly teaches

against such modifications for at least the reasons noted above (i.e., in reference to the alleged Glaser/Depauw combination).

In view of the above, Applicant respectfully submits that the alleged Lemmer/Depauw combination fails to render obvious claims 1, 15, 30, and 32. Furthermore, Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have been motivated to "adjust" the Lemmer/Depauw combination in a way that would render claims 1, 15, 30, and 32 obvious. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

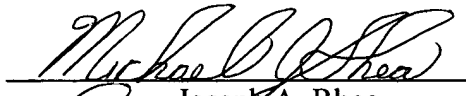
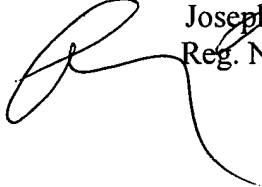
Conclusion

In view of the above, it is respectfully requested that all rejections be withdrawn. All claims are in condition for allowance. If any minor matter remains to be resolved, the Examiner is invited to telephone the undersigned with regard to the same.

Respectfully submitted,

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